

ORIGINAL

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

**Calling Party Pays Service Offering
in the Commercial Mobile Radio
Services**

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WT Docket No. 97-207

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REPLY COMMENTS OF LEAP WIRELESS INTERNATIONAL, INC.

LEAP WIRELESS INTERNATIONAL, INC.

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Some industry participants claim that CPP will expand wireless penetration and bring greater competition in local telephony, but produce little support for these conclusory statements. Apparently preferring to ignore the questionable results of CPP tests to date in the United States, virtually the only evidence cited by CPP advocates is derived from international experiences with CPP. Yet that data is fundamentally inapplicable here, and in any case does not clearly support the notion that CPP would bring any significant consumer benefits to U.S. consumers.

For example, several commenters point out that international CPP "success stories" are overrated. In Mexico, for example, one would expect the market to be ripe for CPP: local landline calls cost \$0.13 while CPP calls cost \$0.27,¹ and with only 9.6% of people having access to a telephone landline, wireline penetration lags far behind the U.S.² In such circumstances, one would expect consumers to flock to CPP as a service offering, but in fact, subscribership and average minutes of use rose only slightly after the introduction of CPP.³ Moreover, in Chile, where consumers are accustomed to paying per-minute charges, and thus should have been receptive to CPP, BellSouth Chile actually saw its subscriber growth rate *decline* slightly after the service was introduced.⁴

To the extent that some countries that offer CPP have successful wireless systems, that success cannot necessarily be attributed to CPP availability alone. In Finland and Japan, for example, cell phones can be used as multipurpose data terminals; they can be used to trade

¹ The Strategis Group, *Calling Party Pays: Case Study Analysis*, at 46-48 (1999) (appended to Comments of the Personal Communications Industry Association) ("*CPP Case Study*").

² Joint Comments of Texas Office of Public Utility Counsel, Consumer Federation of America and Consumer Union ("*TOPC/CFA/CU Comments*") at 26.

³ *CPP Case Study* at 49.

⁴ *Id.* at 31.

stocks, reserve airline tickets, or upload images from digital cameras.⁵ Moreover, limited wireline penetration and the relative expense of wireline calls make wireless telephony a more attractive substitute for wireline in many other countries.⁶ The comments in this proceeding demonstrate that the availability of CPP is "among the least significant" of the "myriad" factors responsible for increased wireless usage in other countries.⁷

Leap agrees that CPP is unlikely to provide any real public interest benefits. As one major carrier has stated in its opening comments, "CPP is likely to be a niche service, at most."⁸ It would be unwise for the Commission to introduce a broad new regulatory initiative in order to promote a service of such dubious value.

II. THE COMMISSION'S PROPOSED CPP RULES ARE MORE LIKELY TO HARM CONSUMERS THAN TO BENEFIT THEM

State public utility commissions and other organizations that represent telecommunications consumers have overwhelmingly rejected the notion that CPP will bring increased public interest benefits. Rather, as many commenters pointed out, CPP is likely to work to the *detriment* of consumers by reducing competition, causing confusion, and imposing significant implementation costs.

The United States CMRS market is thriving. Wireless penetration continues to increase, and rates continue to fall. Most consumers have their choice of several wireless carriers, and that competition forces carriers to offer plans that meet consumers' needs and

⁵ Joint Comments of the Ad Hoc Telecommunications Users Committee and ACUTA: The Association of Telecommunications Professionals in Higher Education (AHTUC/ACUTA Comments) at 31.

⁶ See generally *CPP Case Study*. Notwithstanding this, as stated in its initial comments, the value and convenience of Leap's flat-rated unlimited local calling offers the prospect of being a true wireline substitute.

⁷ AHTUC/ACUTA Comments at 30-32.

⁸ Comments of BellSouth Corp. at i.

desires. Thus, pricing plans have naturally evolved that are beginning to offer low and predictable rates: digital one rate "bucket" plans, prepaid wireless, free incoming minutes, and most recently, unlimited local calling. Leap agrees with the parties who point out that market-driven competition has thus far been adequate to fuel the explosive growth in wireless telephony.⁹ In a market characterized by falling prices and skyrocketing growth rates, it is difficult to imagine what an extra layer of regulation would accomplish. Leap agrees that the Commission should be careful not to upset these market conditions.¹⁰

The structural and regulatory apparatus required by the Commission's proposed rules would impose significant costs on telephone consumers—costs in addition to any CPP charges they might incur.¹¹ Likewise, as noted by Leap and other commenters, there is a strong potential for consumer confusion arising from the proposed notification system.¹² Commenters have also pointed out ways in which the proposed regulations could have an "unintended, adverse impact" on various industry segments.¹³

Moreover, CPP by its nature would tend to diminish price competition for incoming calls, as incoming rates would be paid by persons unable to negotiate those rates.¹⁴ The Federal Trade Commission, for example, noted the potential for abusive charges to calling

⁹ Comments of the United States Telephone Association ("USTA Comments") at 7-10.

¹⁰ *See id.* at 6-8.

¹¹ TOPC/CFA/CU Comments at 7-8.

¹² *See, e.g.*, Comments of the Cellular Telecommunications Industry Association at 24-26 (noting potential for inaccurate or incomplete pricing information in the proposed notification).

¹³ *See* Comments of Moultrie Independent Telephone Company at 2 (noting impact on small rural carriers); *see also* Comments of MCI WorldCom, Inc. at 11-14 (pointing out the potential for "tromboning," to the detriment of international carriers).

¹⁴ *Id.* at 8-9, 11-12.

parties.¹⁵ CPP necessarily causes a market breakdown, as costs are shifted from subscribers who are able to negotiate rates to callers—a diffuse group that may be incapable of exerting significant price discipline on rates.¹⁶ One party has estimated that CPP would largely immunize from competition telecommunications services worth over \$3 billion by transferring those costs to calling parties.¹⁷

III. ANY CPP REGULATION MUST BE INFORMED BY U.S. MARKET TRIALS

A number of commenters echoed Leap's position that the effect of, and consumer response to, any Commission regulation regarding CPP must be assessed through U.S. market trials, rather than misplaced analogies to the "very different European telecommunications market."¹⁸ Yet no party has provided any concrete evidence of U.S. market reaction to CPP, or of potential difficulties likely to be encountered in this country. As discussed in Leap's opening comments, the extremely limited CPP market trials in the United States cannot form the basis for a rational decision.

Nor can the international experience replace U.S. market trials as the basis of Commission decisionmaking. Differences in consumer expectations and regulatory infrastructure set the international experience apart from anything to be expected in the United States. On the issue of consumer notification, for example, the Ad Hoc Telecommunications Users Committee observes that in every country which has so far implemented CPP, wireless

¹⁵ See Comment of the Federal Trade Commission at 21. See also Comments of the Competition Policy Institute at 7-9 (noting potential for "Santa Claus" lines and similar scams).

¹⁶ See *id.*

¹⁷ AHTUC/ACUTA Comments at 6-7.

¹⁸ *Id.* at 13. See also, e.g., Comments of the Public Service Commission of Wisconsin at 2.

calls are identified by separate area codes or dialing prefixes.¹⁹ And most foreign countries have standardized rates, unlike U.S. rates which vary according to the location and time a call is placed, as well as with the identity of the carrier.²⁰ The likelihood of customer confusion is much greater in the United States, where people expect local calls to be free. Likewise, the difficulties of implementation are far greater here, where multiple wireless and wireline carriers must somehow coordinate their efforts. Any attempt to draw upon foreign examples to guide implementation of domestic CPP service would ignore the dramatic differences that set the U.S. market apart from others.

Ultimately, CPP offers doubtful benefits to consumers, but threatens to upset a highly competitive and consumer-friendly status quo. CPP's promise of competition is ephemeral: CPP carriers would collect the same rates, but would make wireless service *appear* less expensive by shifting a portion of the cost onto third parties. But real competition involves lowering prices, not shifting costs. Products such as Leap's flat rated, unlimited local service will compete with wireline and other wireless providers by providing superior value and convenience. The future of wireless service—and the prospect of competition with wireline telephony—lies in reducing or eliminating per-minute charges, not shifting those charges onto callers.

¹⁹ AHTUC/ACUTA Comments at 25.

²⁰ *Id.* at 28-29.

IV. CONCLUSION

For the foregoing reasons, the Commission should re-think its proposed approach to CPP introduction and implementation. There is little evidence that CPP will benefit consumers, and a strong likelihood that it will affirmatively and unnecessarily disadvantage them.

Respectfully submitted,

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